



January 11, 2008

SENATE BILL No. 3

DIGEST OF SB 3 (Updated January 9, 2008 11:43 am - DI 104)

Citations Affected: IC 16-34; IC 25-26; IC 34-30.

Synopsis: Dispensing of drugs by pharmacists. Provides that a pharmacist may not be required to dispense a drug or medical device if the drug or medical device would be used to: (1) cause an abortion; (2) destroy an unborn child; or (3) cause the death of a person by means of assisted suicide, euthanasia, or mercy killing. Specifies that a pharmacist's refusal to dispense a drug or medical device may not be the basis for: (1) a claim of damages against the pharmacist or pharmacy; and (2) disciplinary action against the pharmacist. Provides that an employer who knowingly or intentionally takes disciplinary, recriminatory, or discriminatory action against a pharmacist who refuses to dispense a drug or medical device commits pharmacy discrimination, a Class A misdemeanor. Makes a second or subsequent offense a Class D felony. Authorizes the Indiana board of pharmacy to assess additional fines against the employer.

Effective: July 1, 2008.

Drozda

January 8, 2008, read first time and referred to Committee on Health and Provider Services.
January 10, 2008, amended, reported favorably — Do Pass.

SB 3—LS 6061/DI 104+



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January 11, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 3

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-34-1-5.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 5.5. (a) No pharmacist may be required to dispense**
4 **a drug or medical device if the pharmacist believes that the drug**
5 **or medical device would be used to:**

6 (1) **cause an abortion;**

7 (2) **destroy an unborn child; or**

8 (3) **cause the death of a person by means of assisting suicide**
9 **(IC 35-42-1-2.5), euthanasia, or mercy killing.**

10 **(b) A pharmacist's refusal under this section to dispense a drug**
11 **or medical device may not be the basis for:**

12 (1) **a claim for damages against the pharmacist or the**
13 **pharmacy where the pharmacist is employed; or**

14 (2) **disciplinary, recriminatory, or discriminatory action**
15 **against the pharmacist by the employer.**

16 **(c) An employer who knowingly or intentionally takes**
17 **disciplinary, recriminatory, or discriminatory action against a**

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1 pharmacist employed by the employer because the pharmacist
 2 refused to dispense a drug or medical device under subsection (a)
 3 commits pharmacy discrimination, a Class A misdemeanor.
 4 However, the offense is a Class D felony if the employer has a prior
 5 unrelated conviction for a violation of this subsection.

6 (d) If an employer is convicted of pharmacy discrimination
 7 under subsection (c), the Indiana board of pharmacy may assess
 8 against the employer a fine of not more than five thousand dollars
 9 (\$5,000) for a first offense and a fine of not more than ten thousand
 10 dollars (\$10,000) for a second or subsequent offense. A fine
 11 assessed under this subsection is in addition to any fine or other
 12 penalty imposed under subsection (c).

13 SECTION 2. IC 25-26-13-4, AS AMENDED BY P.L.204-2005,
 14 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2008]: Sec. 4. (a) The board may:

- 16 (1) promulgate rules and regulations under IC 4-22-2 for
 17 implementing and enforcing this chapter;
- 18 (2) establish requirements and tests to determine the moral,
 19 physical, intellectual, educational, scientific, technical, and
 20 professional qualifications for applicants for pharmacists'
 21 licenses;
- 22 (3) refuse to issue, deny, suspend, or revoke a license or permit or
 23 place on probation or fine any licensee or permittee under this
 24 chapter **or fine an employer under IC 16-34-1-5.5;**
- 25 (4) regulate the sale of drugs and devices in the state of Indiana;
- 26 (5) impound, embargo, confiscate, or otherwise prevent from
 27 disposition any drugs, medicines, chemicals, poisons, or devices
 28 which by inspection are deemed unfit for use or would be
 29 dangerous to the health and welfare of the citizens of the state of
 30 Indiana; the board shall follow those embargo procedures found
 31 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not
 32 refuse to permit or otherwise prevent members of the board or
 33 their representatives from entering such places and making such
 34 inspections;
- 35 (6) prescribe minimum standards with respect to physical
 36 characteristics of pharmacies, as may be necessary to the
 37 maintenance of professional surroundings and to the protection of
 38 the safety and welfare of the public;
- 39 (7) subject to IC 25-1-7, investigate complaints, subpoena
 40 witnesses, schedule and conduct hearings on behalf of the public
 41 interest on any matter under the jurisdiction of the board;
- 42 (8) prescribe the time, place, method, manner, scope, and subjects

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1 of licensing examinations, which shall be given at least twice
2 annually; and

3 (9) perform such other duties and functions and exercise such
4 other powers as may be necessary to implement and enforce this
5 chapter.

6 (b) The board shall adopt rules under IC 4-22-2 for the following:

7 (1) Establishing standards for the competent practice of
8 pharmacy.

9 (2) Establishing the standards for a pharmacist to counsel
10 individuals regarding the proper use of drugs.

11 (3) Establishing standards and procedures before January 1, 2006,
12 to ensure that a pharmacist:

13 (A) has entered into a contract that accepts the return of
14 expired drugs with; or

15 (B) is subject to a policy that accepts the return of expired
16 drugs of;

17 a wholesaler, manufacturer, or agent of a wholesaler or
18 manufacturer concerning the return by the pharmacist to the
19 wholesaler, the manufacturer, or the agent of expired legend drugs
20 or controlled drugs. In determining the standards and procedures,
21 the board may not interfere with negotiated terms related to cost,
22 expenses, or reimbursement charges contained in contracts
23 between parties, but may consider what is a reasonable quantity
24 of a drug to be purchased by a pharmacy. The standards and
25 procedures do not apply to vaccines that prevent influenza,
26 medicine used for the treatment of malignant hyperthermia, and
27 other drugs determined by the board to not be subject to a return
28 policy. An agent of a wholesaler or manufacturer must be
29 appointed in writing and have policies, personnel, and facilities
30 to handle properly returns of expired legend drugs and controlled
31 substances.

32 (c) The board may grant or deny a temporary variance to a rule it
33 has adopted if:

34 (1) the board has adopted rules which set forth the procedures and
35 standards governing the grant or denial of a temporary variance;
36 and

37 (2) the board sets forth in writing the reasons for a grant or denial
38 of a temporary variance.

39 (d) The board shall adopt rules and procedures, in consultation with
40 the medical licensing board, concerning the electronic transmission of
41 prescriptions. The rules adopted under this subsection must address the
42 following:

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- 1 (1) Privacy protection for the practitioner and the practitioner's
- 2 patient.
- 3 (2) Security of the electronic transmission.
- 4 (3) A process for approving electronic data intermediaries for the
- 5 electronic transmission of prescriptions.
- 6 (4) Use of a practitioner's United States Drug Enforcement
- 7 Agency registration number.
- 8 (5) Protection of the practitioner from identity theft or fraudulent
- 9 use of the practitioner's prescribing authority.
- 10 SECTION 3. IC 34-30-2-70.5 IS ADDED TO THE INDIANA
- 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 12 [EFFECTIVE JULY 1, 2008]: **Sec. 70.5. IC 16-34-1-5.5 (Concerning**
- 13 **a pharmacist or pharmacy that refuses to dispense certain drugs**
- 14 **or medical devices).**

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 3, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 15, delete "pharmacist." and insert "**pharmacist by the employer.**".

and when so amended that said bill do pass.

(Reference is to SB 3 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 5.

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